

ESTTA Tracking number: **ESTTA714121**

Filing date: **12/11/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224272
Party	Defendant Pac-West Distributing NV LLC
Correspondence Address	MARK BORGHESE BORGHESE LEGAL LTD 10161 PARK RUN DR , STE 150 LAS VEGAS, NV 89145-8872 UNITED STATES mark@borgheselegal.com, docket@borgheselegal.com
Submission	Answer
Filer's Name	Mark Borghese
Filer's e-mail	mark@borgheselegal.com
Signature	/MB/
Date	12/11/2015
Attachments	2015-12-11-Answer to Opposition - SR.pdf(107313 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AFAB INDUSTRIAL SERVICES, INC.,)	
)	
)	Opposition No. 91224272
)	
Opposer,)	Serial No. 86/599421
)	Mark: SUPER RUSH
vs.)	
)	
PAC-WEST DISTRIBUTING NV LLC)	
)	
)	
Applicant.)	
)	
)	

ANSWER TO NOTICE OF OPPOSITION

Applicant, Pac-West Distributing NV LLC (“Applicant”) responds to the Notice of Opposition filed by AFAB Industrial Services, Inc. as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice and therefore denies the same.
3. Admitted.
4. Admitted.
5. Applicant admits that it filed its application pursuant to 15 U.S.C. § 1051(a) based on use in commerce, but denies the remaining allegations contained in Paragraph 5.
6. Denied.
7. Denied.
8. Applicant admits that the Federal government has restricted Isobutyl Nitrite and Alkyl Nitrite pursuant to 15 U.S.C. 2057a and 2057b, but denies the remaining allegations of

paragraph 7 which fall outside those two provisions.

9. Applicant admits that authorized licensees may sell cleaning products that contain Isobutyl Nitrite but denies the remaining allegations of Paragraph 9.
10. Applicant admits that authorized licensees may sell cleaning products that contain Isobutyl Nitrite but denies the remaining allegations of Paragraph 10.
11. Applicant admits that photographs appearing on Page 5 of the Notice appear to be cleaning products from an authorized licensee that may contain Isobutyl Nitrite. Applicant denies the remaining allegations in Paragraph 11, including the other alleged product photographs.
12. Applicant admits that authorized licensees may sell cleaning products to consumers, but denies that the products are not commercial products.
13. Applicant admits that authorized licensees may sell cleaning products containing between 10 – 30 ml of product, but denies the remaining allegations in Paragraph 13.
14. Applicant admits that authorized licensees may sell cleaning products to consumers, but denies the remaining allegations of Paragraph 14.
15. Applicant admits that authorized licensees may market and sell cleaning products through consumer retail sales, but denies the remaining allegations of Paragraph 15.
16. Applicant admits that authorized license may market and sell cleaning products labeled as solvent cleaner which contain instructions which state, in part, “Dip cotton swab in solvent and apply to area to be cleaned.” Applicant denies the remaining allegations of Paragraph 16.
17. Denied.
18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Notice and therefore denies the same.

19. Denied.

COUNT I – NO LAWFUL USE IN COMMERCE

20. Applicant incorporates by references its responses to paragraphs 1 – 19 of the Notice as if full set forth herein.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Notice and therefore denies the same.

22. Applicant admits that the Federal government has restricted Isobutyl Nitrite and Alkyl Nitrite pursuant to 15 U.S.C. 2057a and 2057b, but denies the remaining allegations of Paragraph 22 which fall outside those two provisions.

23. Applicant admits that the Federal government has restricted Isobutyl Nitrite and Alkyl Nitrite pursuant to 15 U.S.C. 2057a and 2057b, but denies the remaining allegations of Paragraph 23 which fall outside those two provisions.

24. Applicant admits that authorized licensees may sell cleaning products that contain Isobutyl Nitrite but denies the remaining allegations of Paragraph 24.

25. Denied.

26. Denied.

27. Denied.

COUNT II – FRAUD

28. Applicant incorporates by references its responses to paragraphs 1 – 27 of the Notice as if full set forth herein.

29. Applicant admits that it stated that the Super Rush mark was in use in commerce on or in connection with the goods listed in the application, but denies that the remaining

allegation of Paragraph 29, including any misrepresentation.

30. Denied.

31. Denied.

32. Applicant admits that its application was approved for publication and published in the *Official Gazette*, but denies the remaining allegations of paragraph 32.

33. Denied.

34. Denied.

AFFIRMATIVE DEFENSES

A. The Notice fails to state a claim upon which relief can be granted.

B. Applicant is at least entitled to a registration with a restriction related to 15 U.S.C. 2057a and 2057b.

C. Applicant intends to rely on the equitable defenses of laches, estoppel, and acquiescence.

Respectfully submitted,

Dated: December 11, 2015

By: 

Mark Borghese, Esq.
Borghese Legal, Ltd.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Tel: (702) 382-0200
Fax: (702) 382-0212
Email: mark@borgheselegal.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** has been served on the attorney of record for Petitioner on December 11, 2015 by U.S. First Class Mail, postage prepaid, with a courtesy copy provided by email to:

Sean P. McConnell
PEPPER HAMILTON LLP
3000 Two Logan Square Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

Email: mcconnells@pepperlaw.com, tilleryk@pepperlaw.com,
catalant@pepperlaw.com



Mark Borghese